

Appl. No. 09/700,561  
Atty. Docket No. AA315X/KL  
Amdt. dated February 27, 2004  
Reply to Office Action of December 4, 2003  
Customer No. 27752

### REMARKS

This paper replaced previously faxed Amendment also faxed on February 27, 2004 which contained an inadvert typographical error designating the status of Amended Claim 1 as "original."

Claims 1, 4-5 and 7-10 are pending in the present application. Claims 1, 4-5 and 7-10 have been rejected under 35 U.S.C. § 102.

Claims 2-3, 6, and 11-29 were previously cancelled.

### Objection to Claim 1

Claim 1 has been objected to as unclear what region the applicant intends to refer to. Claim 1 has been amended to clarify that the each ear panel is joined to a corresponding portion in the opposite front or back region. Therefore, a portion of the ear panel located in the front region would be joined to a corresponding portion of the ear panel located in the back region and vice versa. The resulting structure is more than clear from the entirety of the claims, particularly when these claims are viewed in light of the description. Therefore, the objection to claim 1 should be withdrawn.

### Rejection Under 35 USC 102

Claims 1, 4-5 and 7-10 have been rejected under 35 U.S.C. § 102(b) as anticipated EP 0 547 497 to Van Gompel et al. Contrary to the position articulated in the Office Action, however, none of the cited claims are anticipated by the Van Gompel reference.

For example, the Office Action makes no particularly showing (other than a reproduction of Fig. 6 and a cite to Fig. 5) of how the claim term in claim 1 what the waist elastomeric material and the side elastomeric material are separate elements and are disposed so as not to overlap each other. Fig. 5 and Fig. 6 of the Van Gompel patent, however do not disclose this claim feature in the manner indicated by the Office Action.

A closer reading of the Van Gompel patent reveals that the stretchable side panel material and the waist elastic of the Van Gompel product are not separate and are overlapping contrary to the relationship claimed in Claim 1. For example, Fig. 1 of the Van Gompel patent shows the side stretchable portion 36 extends all the way to waist opening 12 and the stretchable side portion 36 is also shown as overlapping the waistband 14. They are not separate elements which do not overlap. Fig. 3 of Van Gompel shows a similar structure with a rectangular side

Appl. No. 09/700,561  
Atty. Docket No. AA315X/KL  
Amdt. dated February 27, 2004  
Reply to Office Action of December 4, 2003  
Customer No. 27752

panel. Again, the stretchable side panel 36 extends all the way to the waist opening 12 and overlaps the waist elastic 14. They are not separate elements which do not overlap as claimed.

Fig. 5 and Fig. 6 of Van Gompel shows an article which does bear some similarity to applicants' FIG. 2. However, Fig. 5 and Fig. 6 of the cited document may not be viewed in isolation. It is unclear merely by looking at Fig. 5 or Fig. 6 if the side portions 36 overlap the waist band 14 or not. The description of Fig. 6 is the specification makes clear that Fig. 6 is based upon Fig. 3 where it is more clearly shown that these components overlap. Similarly, Fig. 5 is based upon Fig. 2. Additionally, beginning at column 6, line 54 until column 7 line 15 the Van Gompel specification describes Figures 3 and 6. This description makes clear that the side panel continues all the way to waist opening 12 and does not terminate at the waistband 14. This is clear by the discussion of the stretch properties of the waist panel which contain a gradient from the leg opening to the waist opening. The accompanying description of Fig. 5 located at column 6 lines 7-50 is nearly identical in these respects (i.e. the stretch panel is described as extending all the way to the waist opening, and consequently overlaps the waistband).

The present claim is different in that the waist band and elastic side panel are separate and do not overlap. The fact that these elements are separate and do not overlap allow the stretch properties of the waist band to be significantly more independent of the stretch properties of the side panel area than the structure shown in Van Gompel.

The present invention is directed to a structure in which the stretchable waist has more freedom of operation from the side panels than prior art devices such as those shown in Van Gompel provided. In the area of overlap, the properties of both the waist and side panel will combine to interfere with each other. For at least these reasons, applicants' pending claims are patentable over the cited Van Gompel patent and the rejections under 35 U.S.C. § 102 should be withdrawn.

#### Conclusion

No new matter has been introduced by this amendment.

Issuance of a notice of allowance at an early date is respectfully requested.

Respectfully submitted,

By Matthew P. Fitzpatrick  
Matthew P. Fitzpatrick  
Attorney for Applicant(s)  
Registration No. 41,751  
(513) 626-4287

February 27, 2004  
Customer No. 27752  
(Amendment-Response to Office Action 07302003)